APPENDIX A

Constitutional Provision, Statutes and Regulations

(a) Constitution of The United States, Amendment Thirteen.

> Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction.

(b) 26 U.S.C. (1952) Section 22(n), being Section 22(n) of the Internal Revenue Code of 1939, as amended. Enacted by Section 8, Individual Income Tax Act of 1944, C. 210, 58 Stat. 231.

> Sec. 22. Gross Income
>
> (n) *Definition of "Adjusted Gross Income".*—As used in this chapter the term "adjusted gross income" means the gross income minus—
>
> (2) *Expenses of travel and lodging in connection with employment.*—The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(c) 26 U.S.C. (1952) Section 23(a)(1)(A), being Section 23(a)(1)(A) of the Internal Revenue Code of 1939, as amended. Enacted by Section 121(a) of the Revenue Act of 1942, C. 619, 56 Stat. 798.

> Sec. 23. Deductions From Gross Income.
>
> In computing net income there shall be allowed as deductions:
>
> (a) *Expenses.*—
>
> (1) *Trade or business expenses.*—
>
> (A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in

carrying on any trade or business, including * * *; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *

(d) 26 U.S.C. (1952) Section 24(a)(1) being Section 24 (a)(1) of the Internal Revenue Code of 1939, as amended. Enacted by Section 127(b) of Revenue Act of 1942, C. 619, 56 Stat. 798.

Sec. 24. Items Not Deductible.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x);

(e) Treasury Regulation 118, Section 39.22(n)-1, promulgated under Internal Revenue Code of 1939, as amended, 26 C.F.R. (1953 Revision) Section 39.22(n)-1.

Sec. 39.22(n)-1. *Adjusted gross income.*

(a) The term "adjusted gross income" means the gross income computed under section 22 minus such of the deductions allowable under section 23 as are specified in section 22(n). * * *

(b) Section 22(n) does not create any new deductions, but merely specifies which of the deductions provided in section 23 shall be allowed in computing adjusted gross income. The circumstances that a particular item is specified in one of the clauses under section 22(n) and is also embraced within the terms of another of such clauses does not permit the item to be twice deducted in computing adjusted gross income.

(c) The deductions specified in section 22(n) for the purpose of computing adjusted gross income are: (1) Deductions allowable under section 23, which are attributable to a trade or business carried on by the taxpayer not consisting of services performed as an employee; (2) deductions allowable by section 23 which constitute expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in

connection with the performance by him of services as an employee; (3) deductions allowable by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred in connection with the performance of services as an employee under a reimbursement or other expense-allowance arrangement with his employer; * * *

(d) For the purpose of the deductions specified in section 22(n) the performance of personal services as an employee does not constitute the carrying on of a trade or business. * * *

(f) Treasury Regulation 118, Section 39.23(a)-1, promulgated under Internal Revenue Code of 1939, as amended. 26 C.F.R. (1953 Revision) Section 39.23(a)-1.

Sec. 39.23(a)-1. *Business expenses.* Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except items which are used as the basis for a deduction or a credit under provisions of law other than subsection (a) of section 23. Double deductions are not permitted. Amounts deducted under one provision of the Internal Revenue Code cannot again be deducted under any other provision thereof. * * * Among the items included in business expenses are * * * traveling expenses while away from home solely in the pursuit of a trade or business * * *.

(g) Treasury Regulation 118, Section 39.23(a)-2, promulgated under Internal Revenue Code of 1939, as amended. 26 C.F.R. (1953 Revision) Section 39.23(a)-2.

Sec. 39.23(a)-2. *Traveling expenses.* (a) Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses.

* * * * *

(f) Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted.

(g) A taxpayer claiming the benefit of the deductions referred to in this section must attach to his return a statement showing (1) the nature of the business in which engaged; (2) the number of days away from home during the taxable year on account of business; (3) the total amount of expenses incident to meals and lodging while absent from home on busniess during the taxable year; and (4) the total amount of other expenses incident to travel and claimed as a deduction.

(h) Claim for the deductions referred to in this section must be substantiated, when required by the Commissioner, by evidence showing in detail the amount and nature of the expenses incurred.

(i) Commuters' fares are not considered as business expenses and are not deductible.

APPENDIX B

Opinions and Judgments Below

Tax Court of the United States

JAMES E. PEURIFOY, ET AL.,[1] Petitioner, v. Commissioner of Internal Revenue, Respondent. Docket Nos. 55694, 56074, 56262. Filed October 31, 1956.

Deductions—Traveling Expenses.—Held, that the evidence establishes that the employment of the petitioners away from the places of their established residences was temporary in character and that the costs of meals, lodging and transportation constituted deductible traveling expenses while away from home. Sections 22(n) and 23(a)(1)(A) of the Internal Revenue Code of 1939.

Daniel R. Dixon, Esq., for the petitioners.

Hubert E. Kelly, Esq., for the respondent.

---

[1] Proceedings of the following petitioners are consolidated herewith: Paul V. Stines and Betty O. Stines, Docket No. 56074, and John S. Hall and Doris D. Hall, Docket No. 56262.

The respondent determined deficiencies in income tax for the calendar year 1953 as follows:

James E. Peurifoy	$449.88
Paul V. Stines and Betty O. Stines	492.12
John S. Hall and Doris D. Hall	365.96

The question presented is whether amounts expended by James E. Peurifoy, Paul V. Stines and John S. Hall, hereinafter referred to as the petitioners, for board and lodging at a job site and for transportation therefrom to their residences after termination of employment are deductible pursuant to sections 22(n) and 23(a)(1)(A) of the Internal Revenue Code of 1939, or whether they constitute nondeductible personal expenditures under section 24(a)(1).

Findings of Fact

In the case of each petitioner some of the facts were stipulated and are found as stipulated, the stipulations being incorporated herein by this reference.

Returns were timely filed by the petitioners for the calendar year 1953 with the district director of internal revenue for the district of North Carolina.

The petitioner James E. Peurifoy is a pipe welder. Since August 13, 1951, he has been a member of Local No. 329, with headquarters in Wilmington, North Carolina, of the trade union known as The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (hereinafter referred to as the union). The petitioner Stines is a journeyman plumber and the petitioner Hall is a welder. Since 1947 and 1952, respectively they have been members of Local No. 785 of the same union, with headquarters at Raleigh, North Carolina. They all obtain employment through their local unions which send them to various work sites where they are then hired by the employer.

Members of local unions are often sent to other jurisdictions for work. In the case of a large project journeymen workers, as distinguished from foremen or superintendents, may be drawn from various states. Where a job requires more skilled craftsmen than a local union has available in the area, the local union will deal with other local unions in the same state or other states in order to procure the necessary workers. If this does not produce

sufficient workmen the national union will procure journeymen and apprentices from all over the country. A journeyman craftsman working on construction projects may have several different employers in the course of a year or even though he may work for one employer throughout a year, he may work at several different job sites. In the building and construction industry, some construction jobs such as the Atomic Energy projects, may run for a period of years, but the general run of jobs is for a period of a few weeks or for a few months.

The petitioner Peurifoy is, and was during the year 1953, an unmarried individual. During the entire year 1953, he owned and maintained a residence at Kure Beach, North Carolina, which is about 20 miles from Wilmington. He actually resides there when he is employed in the vicinity of Wilmington and returns to this residence on week ends if the place of employment is within a reasonable distance. He uses his own automobile for transportation.

He was first employed by The Piping Equipment Company with main offices in Greensboro, North Carolina, to work on a paper mill at Acme, North Carolina. He worked on this project from about August 13, 1951 until about March 10, 1952.

He was next employed by The Grinnell Company of Charlotte, North Carolina, to work on the duPont plant at Kinston, North Carolina. He worked on this project from March 10, 1952 until November 20, 1953. While so employed he roomed and boarded near Kinston and from January 1, 1953 through November 20, 1953, he expended for room and board the sum of $496. The distance from his home in Kure Beach to the duPont plant is approximately 122 miles. The cost to him of driving his automobile from Kinston to Kure Beach after termination of this employment was $8.54.

He was next employed by The Grinnell Company to work on the Carolina Light and Power Company plant at Mount Misery, North Carolina, situated about seven miles from Wilmington. He worked on this project from November 30, 1953 through May 14, 1955, and while he worked on this project he resided in his residence at Kure Beach. Thereafter, in 1955 he worked at Cherry Point, North Carolina, for three months, at Acme, North Carolina, for two weeks, and at Barberton, Ohio, for about one week.

In his return for 1953, he deducted the amount of $1,920.80 from gross income as "Subsistence and temporary quarters necessary for earning income, not reimbursed by employer." The respondent disallowed the entire claimed deduction on the ground that payment thereof had not been proven and that even if paid the expenditure represented personal and living expenses.

The petitioners, Paul V. Stines and Betty O. Stines, are husband and wife. Betty O. Stines appears as a petitioner by virtue of having joined in the filing of the income tax return for 1953. During the entire year 1953 they maintained a residence in Raleigh, North Carolina, and had maintained such residence since sometime in 1952. Betty O. Stines and the petitioners' minor child actually resided in such residence during the entire year 1953.

Since 1947, when he became a member of the union, the petitioner Paul V. Stines has had about 30 jobs ranging in duration from two weeks to over a year. He worked for one employer for over two years but on different jobs in different locations. He was employed by the Grinnell Company of Charlotte, North Carolina, to work on the duPont plant at Kinston, North Carolina, from March 26, 1952 until about April 10, 1953, when he was discharged. While so employed, he rented a room at Kinston, North Carolina, and ate his meals in restaurants. During 1953 he expended $262.50 for room and board. The distance from Raleigh to Kinston by automobile is approximately 78 miles and the distance from Kinston to the plant site is approximately an additional eight miles. He drove his car or rode with others from his residence in Raleigh to his rooming house in Kinston and returned once a week. The cost to him, under his car pool arrangement, for transportation from Kinston to Raleigh upon termination of his work in Kinston was $1.09. While employed at Kinston he received 14.8 cents per hour greater than the normal union scale in accordance with the agreement between the Grinnell Company and the union. All union employees received this additional amount regardless of where they were living. This extra amount was intended to compensate the employees for time expended in going from the town of Kinston to the job site and return.

He was next employed by Carl B. Mims of Raleigh from about April 13, 1953 to about April 28, 1953, to work in and around the environs of Raleigh.

He then worked for A. L. Wright and Company, Inc. of Portsmouth, Virginia, from about May 6, 1953 to about June 23, 1953, when he quit for personal reasons. This work was performed on the Westinghouse plant near Raleigh.

His next employment was with Markowitz Bros., Inc. of Miami, Florida, to work on an air base near Charleston, South Carolina. He worked there from about June 23, 1953 to about July 15, 1953. He went to Charleston by driving his car. The distance from Raleigh to Charleston is approximately 300 miles and the distance from his boarding house in Charleston to the plant site is approximately 11 miles. While at Charleston the petitioner expended $57 for room and board. The expenses incurred for driving his car from Raleigh to Charleston and return was $42.

He was next employed by Biemann and Rowell of Raleigh, North Carolina, from August 1, 1953 through December 31, 1953. While so employed he was loaned by his employer to Garrison and Hopkins Company, Inc., of Charlotte, North Carolina, to work on the S. H. Kress Company job in Raleigh, and to Cooper and Goodwin of Raleigh to work from December 9, 1953 through December 30, 1953 in and around the environs of Raleigh. He also worked for Garrison and Hopkins Company, Inc., at Fort Bragg, North Carolina, for approximately seven and one-half weeks during 1953. While there he expended $155.63 for room and board. The distance from Raleigh to Fort Bragg is approximately 50 miles. The cost of his transportation for the round trip to Fort Bragg was approximately $7.

In their return for the year 1953, the petitioners, Paul V. and Betty O. Stines, deducted the amount of $2,480 from gross income for "Subsistence and quarter [sic] non reimbursable by employer necessary to earning income." The respondent disallowed the deduction for the same reasons as in the case of the petitioner Peurifoy.

The petitioners, John S. Hall and Doris D. Hall, are husband and wife. They have three minor children. During the entire year 1953 they maintained a residence in Raleigh, North Carolina. They maintained such residence for approximately four years ending in the early part of 1954. Doris D. Hall and the three children actually resided there during the entire year 1953.

The petitioner John S. Hall was first employed in 1952 by the Grinnell Company of Charlotte, North Carolina, to work on the Burlington Mills plant at Neuse, North Carolina, and worked on this project until it was completed in that year.

He was next employed by the Grinnell Company to work on the duPont plant at Kinston, North Carolina, and worked on this project from October 21, 1952 through July 10, 1953. He resigned for personal reasons. While working on the duPont plant at Kinston, he expended $530.13 for room and board during the period January 1, 1953 through July 10, 1953. During this time he returned to Raleigh on weekends. The cost to him of his transportation from Kinston to Raleigh after termination of his employment was $2.01. While he was employed on this project he received 14.8 cents per hour greater than the normal union scale, as explained hereinabove.

He was next employed by A. L. Wright and Company, Inc., of Portsmouth, Virginia, to work on the Westinghouse plant under construction in Raleigh. He worked on this project from July 13, 1953 until the project was completed on March 5, 1954.

Thereafter, in 1954 and 1955, he worked at Portsmouth, Ohio, for about three and one-half months, at Aiken, South Carolina, for about two weeks, at Hopewell, Virginia, for about seven months, at Tarboro, North Carolina, for one month, and at Moncure, North Carolina, on two successive jobs of three months each.

The petitioners, John S. Hall and Doris D. Hall, filed separate individual income tax reurns for the year 1953. In his return for 1953 the petitioner John S. Hall deducted from gross income the amount of $1,556.60 as "Subsistence and quarters non reimbursable by employer necessary to earning income." The respondent disallowed the claimed deduction of $1,566.60 for the same reasons as in the case of the other petitioners herein. Although the petitioner and his wife filed separate returns for 1953 the respondent, in his notice of deficiency, gave the petitioner the benefit of joint filing by including in the notice of deficiency an adjustment for salary income earned by Doris D. Hall in the amount of $270.54. No error has been assigned regarding this adjustment.

The employment of the petitioners at the duPont plant at Kinston was temporary and the expenses incurred by

them for food and lodging while there and for transportation therefrom to their residences upon termination of such employment were incurred while away from their homes in the pursuit of their trade.

Opinion

Atkins, Judge:

The question presented is whether the expenses incurred by the petitioners for meals and lodging while engaged in work at the duPont plant at Kinston, and the cost of returning therefrom, upon termination of their employment, to the places of their residence, constitute allowable deductions under the provisions of sections 22(n) and 23(a)(1)(A) of the Internal Revenue Code of 1939,[2] or whether they are non-deductible personal, living or family expenses within the meaning of section 24(a)(1)[3].

There remains no controversy as to the amounts of any of the expenditures. The stipulation fixes some of the amounts and the parties on brief agree as to others. The

---

[2] Sec. 22(n). Definition of "Adjusted Gross Income."—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) Trade and Business Deductions.—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) Expenses of Travel and Lodging in Connection with Employment.—The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

[3] Sec. 23. Deductions From Gross Income.

In computing net income there shall be allowed as deductions:

(a) Expenses—

(1) Trade or Business Expenses.—

(A) In General.—* * * traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *

(3) Sec. 24. Items Not Deductible.

(a) General Rule.—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x); * * *

amounts of expenditures which we have set forth in our Findings of Fact are limited to the amounts now claimed by the petitioners on brief, they having therein waived any claim of deductibility of certain expenditures.

Ordinarily the cost of meals and lodging is personal and therefore not deductible in arriving at net income. Congress has specifically provided in section 24(a)(1) that personal, living or family expenses are not deductible. And commuting expenses to and from work have always been treated as nondeductible. Frank H. Sullivan, 1 B.T.A. 993. Thus, it has been held that if a taxpayer chooses for reasons personal to him to maintain his residence at a place other than the place of his employment, his personal or living expenses at the place of employment do not lose their character as nondeductible personal expenditures. *Commissioner* v. *Flowers*, 326 U. S. 465 [34 AFTR 301]. See also *Barnhill* v. *Commissioner* (C.A. 4), 148 F. 2d 913 [33 AFTR 1203]; *Ford* v. *Commissioner* (C.A. 4), 227 F. 2d 297; and *Andrews* v. *Commissioner* (C.A. 4), 179 F.2d 502 [38 AFTR 1328], each affirming a decision of this Court.

In the *Flowers* case, *supra*, the Supreme Court stated that "business trips are to be identified in relation to business demands and the traveler's business headquarters. The exigencies of the business rather than the personal conveniences and necessities of the traveler must be the motivating factors." The Supreme Court there also stated that whether particular expenditures fulfil the conditions so as to entitle a taxpayer to a deduction is purely a question of fact in most instances. In the *Barnhill* case, *supra*, the Court stated:

> It is clear in the first place that Congress, in prescribing the rules for the computation of net income, intended to confine the deductions for business expenses to those which are ordinary and necessary, and to prohibit the deduction of personal living or family expenses. It was recognized that the taxpayer must maintain a home for his family at his own expense even when he is absent on business, and that his personal expenses during his absence on business may fairly be regarded as expenses of the business. But it is not reasonable to suppose that Congress intended to allow as a business expense those outlays which are not caused by the exigencies of the business, but by the action of the taxpayer in having his home, for his

> own convenience, at a distance from his business. Such expenditures are not essential to the prosecution of the business and were not within the contemplation of Congress which proceeded on the assumption that a business man would live within reasonable proximity to his business. * * *

As we view the situation here, we do not have the case of a taxpayer who for personal reasons, as distinguished from the requirements of his business, maintains his residence at a place other than that of his actual employment. Each of the petitioners before us is a construction worker and each maintained a residence at a particular place. Peurifoy at Kure Beach, near Wilmington, North Carolina, and Stines and Hall at Raleigh, North Carolina. Each of them belonged to a local union at or near the place of his residence and each obtained employment through that union. The stipulated facts show that throughout a number of years, including the taxable year before us, they have worked at various job sites both at or near their residences and at distant points, sometimes in other states, for varying periods of time. There was no particular place where any one of them principally had employment, although each of them at times worked at or near the place where he maintained his residence. The record indicates that each was accustomed to return to the place of his residence upon the completion of a job. Impelling reasons for the acceptance of employment away from the place of residence readily come to mind, such as the availability of work, the current pay scale, or working conditions.

In this situation we are of the opinion that when any of the petitioners accepted temporary employment away from the places of their residence, they reasonably could not have been expected to establish a residence at the places of employment. In those instances the expenses incurred at the place of employment are considered as being due to the exigencies of the trade or business. That was the situation in *Harry F. Schurer*, 3 T.C. 544, and *E. G. Leach*, 12 T.C. 20, in which we held traveling expenses to be deductible. The respondent recognizes that this is the proper view and concedes that the employment of the petitioner Paul V. Stines at Charleston South Carolina, for about 3 weeks and at Fort Bragg, North Carolina, for about 7½ weeks was temporary and that expenses incurred by him in traveling

to those places to accept employment and returning to Raleigh and the cost of board and lodging while at those places are deductible.

On the other hand, he contends that the expenses incurred by each of the petitioners in connection with employment at the du Pont plant at Kinston, North Carolina, are not deductible. He argues that that job was not temporary, but was of indefinite or indeterminate duration, relying principally upon the length of time the petitioners were employed there, Peurifoy for about 20½ months, Paul V. Stines for about 12½ months, and John S. Hall for about 8½ months, portions of which periods fell within the taxable year. He relies upon the line of cases in which the position has been taken that if the employment is of indefinite duration, the additional living costs and the transportation costs incurred because of failure to bring together the place of residence and the place of employment are deemed to have been occasioned by reasons of personal choice or convenience, resulting in the nondeductibility of the expenses. See *Willard S. Jones*, 13 T.C. 880; *Beatrice H. Albert*, 13 T.C. 129; *Commission* v. *Andrews, supra;* and *Ford* v. *Commissioner, supra.*

The principal factor upon which these cases turned was the nature of the employment. In the *Albert* case we said that the employment "was not the sort of employment in which termination within a short period could be foreseen, as was the situation in *Harry F. Schurer*, 3 T.C. 544, and *E. G. Leach*, 12 T.C. 20." In the *Jones* case the taxpayer was required to work for his employer until released and he could not obtain other work without a release. In the *Andrews* case the employment was "for the duration of the war" and was characterized by the court as being "of indefinite tenure." In the *Ford* case the taxpayer had a regular and continuing employment with one employer over a number of years as subforeman and later as piping superintendent.

The petitioners argue that any employment upon a construction project is temporary in that by its very nature it is terminable, and that hence any expense in connection therewith should be considered as deductible business expense. We think it obvious that such a flat rule cannot be adopted. Each case must be decided upon the basis of its own facts and circumstances, including those relating to the known or contemplated duration of the work, the tax-

payer's intent with regard to the maintenance or establishment of business headquarters, and any facts that develop during the course of the employment. Employment which may appear to be temporary in character at the start may ripen into employment of indefinite duration. See *Arnold P. Bark*, 6 T.C. 851. Furthermore, employment may be of such relatively long actual duration as to indicate, in the absence of evidence to the contrary, that the employment was either indefinite at the start or developed into indefinite employment.

Upon the record in the instant cases, we think that the employment at Kinston was of the same general nature as that involved in the *Schurer* and *Leach* cases, *supra*. The petitioner Hall testified that when they entered upon a job at a particular site, including the Kinston job, they were not guaranteed the job for any specified time and did not know how long they would be employed there, although there was usually some hearsay information as to the duration of the work. Thus, as to all three of the petitioners, there was no reason for them to believe that the nature of the job would be any different from that of other jobs which formed the general pattern of their employment. Each of the petitioners did, upon termination of his work at Kinston, return to the place of his residence and take employment there. On these facts the employment in question is properly to be considered as temporary in nature. In such a situation it would not be reasonable to expect them to shift their residences to the place of employment or to regard Kinston as their "home" for tax purposes.

We conclude that the cost of board and lodging of each of the petitioners at Kinston and the cost of their transportation from Kinston to Raleigh and Kure Beach, respectively, upon termination of this particular employment constitute traveling expenses incurred while away from home in the pursuit of his trade within the intendment of section 23(a)(1)(A), and that they are deductible under section 22(n). See *Carroll B. Mershon*, 17 T.C. 861.

Reviewed by the Court.

Decisions will be entered under Rule 50.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7479

COMMISSIONER OF INTERNAL REVENUE,
Petitioner.

VERSUS

JAMES E. PEURIFOY, PAUL V. STINES and BETTY O. STINES, JOHN S. HALL and DORIS D. HALL,
Respondents.

ON PETITIONS TO REVIEW THE DECISIONS OF THE TAX COURT OF THE UNITED STATES

(Argued October 18, 1957. Decided November 11, 1957)

Before SOPER AND HAYNSWORTH, Circuit Judges, and THOMPSON, District Judge.

KENNETH E. LEVIN, *Attorney*, Department of Justice, (CHARLES K. RICE, *Assistant Attorney General*, and LEE A. JACKSON, *Attorney*, Department of Justice, on brief) for Petitioner, and DANIEL R. DIXON for Respondents.

HAYNSWORTH, *Circuit Judge:*

We have for review a decision of the Tax Court [1] which held that the Commissioner had improperly assessed deficiencies of income tax to three construction workers. The claimed deficiencies arose upon the disallowance by the Commissioner of living expenses of the three workers while each was employed upon a construction project at Kinston, North Carolina, and of the travel expense of each when, upon the termination of his employment, he returned to his residence.

[1] *James E. Peurifoy, et al.* v. *Commissioner*, 27 T.C. 149.

The taxpayer, Peurifoy, an unmarried individual, maintained a residence at Kure Beach near Wilmington, North Carolina. He resided in this house when employed in the vicinity of Wilmington and, at other times, used it on week ends if the place of his employment was not unreasonably distant.

Peurifoy was first employed as a pipe welder in the construction of a paper mill at Acme, North Carolina. After apprximately seven months, he left that employment to work on a new plant for the duPont company under construction near Kinston, North Carolina. He was employed on that project for approximately 20½ months ending November 20, 1953. Thereafter he was employed for approximately 17½ months in the construction of an electric generating plant at Mount Misery, North Carolina, for approximately 3 months in construction work on the Marine Base at Cherry Point, North Carolina, for two weeks on a paper mill project near Acme, North Carolina, and for one week in Barberton, Ohio. The record does not indicate whether any of these employments were terminated for cause, in consequence of completion of the work or for reasons personal to the taxpayer.

The taxpayer, Stines, is married and, beginning sometime in 1952 maintained a residence for his family in Raleigh, North Carolina. A journeyman plumber, he has had approximately thirty jobs since 1947 ranging in duration from two weeks to more than a year. On March 26, 1952, he was employed to work on the duPont plant near Kinston and left 12½ months later, on April 10, 1953. It is stipulated that he left this employment for personal reasons.[2]

The taxpayer, Hall, is married and about 1950 acquired a house for his family in Raleigh, North Carolina. He sold this house in the latter part of 1953, but his family

---

[2] Stines testified that the "personal reasons" for his leaving was that he was discharged after walking off the job during working hours to attend to a personal errand.

continued to reside there until early in 1954. At the time of the stipulation, he was a resident of Knightsdale, North Carolina.

After working for approximately a year in the construction of a textile plant at Nouse, North Carolina, he was employed as a welder in the construction of the duPont plant near Kinston. This employment began October 21, 1952, and ended on July 10, 1953, when he resigned for reasons personal to him. Subsequently, he was employed in the construction of (1) a factory at Raleigh, North Carolina, for 7½ months, (2) an atomic energy plant at Portsmouth, Ohio, for 3½ months, (3) an atomic energy plant near Aiken, South Carolina, for 2 weeks, (4) a chemical plant at Hopewell, Virginia, for 7 weeks, (5) a textile plant at Tarboro, North Carolina, for 1 month, (6) and electric generation plant at Moncure, North Carolina, for 3 months and (7) the same Moncure plant (for a different contractor) in which work he was engaged at the time of the stipulation. He resigned for personal reasons from his jobs at Portsmouth, Aiken and Hopewell as well as from that at Kinston.

While employed at the duPont plant near Kinston, Peurifoy boarded at a house, approximately 1 mile from the plant site, though he went to Kure Beach on weeks ends. The boarding house is approximately 122 miles from his house at Kure Beach and approximately 102 miles from Wilmington which he claims as his tax home.

During the period of their employment at the duPont plant, Stines and Hall rented rooms in Kinston, though on week ends they went to Raleigh where their families resided. Kinston is approximately 78 miles from Raleigh.

The record does not show when the construction of the duPont plant near Kinston began or when it was completed. Nor does it disclose the period of employment of welders, pipe welders or plumbers, the trades practiced by these taxpayers. It does reveal that Peurifoy and Stines were employed on this project in March 1952. Hall was not employed there until October 1952, but he had

been engaged in other employment until then. We are informed that when Stines and Hall quit their jobs at Kinston in April and July 1953, respectively, they did so for personal reasons, not because work for people of their trades was no longer available. The reason for Peurifoy's leaving in November 1953 is not mentioned. It would appear from these facts, however, that it was a construction project of some size and of substantial duration.

The only testimony bearing upon the duration of the work was that of Hall who testified that on all construction jobs, including that at Kinston, they were not guaranteed a job for any specific period nor were they told by the employer how long the work was expected to last. There was talk among the workers of the probable duration of the work. He did not mention, however, what his, or their, expectation was with respect to the duPont project near Kinston.

The only other circumstance considered by the Tax Court as relevant was the membership of Peurifoy in a union local with headquarters in Wilmington and of Stines and Hall in a union local with headquarters in Raleigh, the fact that each received referrals from his local union and the general preference of each for employment in the vicinity to employment at more distant points. But if subjective considerations of personal preference have any bearing upon the problem, it is difficult to find in these considerations any distinction between the case of the construction worker, who, without the assistance of a local union, seeks and obtains employment preferably in the vicinity of the residence of his family but at other times at more distant points. It is stipulated that a union referral is not tantamount to employment and that the individual worker must apply to the contractor at the job site for employment. Upon that application, he is employed or not depending upon the needs and preferences of the employer.

Upon these facts, we think the Tax Court was in error in finding that the employment of these taxpayers on the

du Pont project at Kinston was temporary and in concluding that their maintenance expense while there and the expense of travel at the termination of their employment was deductible under section 23(a)(e)(A) of the Internal Revenue Code.[3]

Work in the heavy construction industry, by its very nature, has a degree of impermanence. Employment is usually for each job only and lasts no longer than the need at that project for the particular skill of the individual employee. Upon many of the larger projects, however, such need, and the actual employment of an individual, may last for several, even many, years. Other projects may be of comparatively short duration. It is also a characteristic of the industry, as shown in the stipulations in this case, that upon larger construction projects outside the larger metropolitan centers, the local supply of the necessary skills must be greatly augmented by workers coming from other places. Work in the industry, therefore, is, to some extent, transient as well as impermanent.

Construction workers are not the only ones, however, who find it necessary or profitable to move or seek employment from place to place, and the Tax Court, in its opinion in these cases, recognizes that the transient and impermanent aspect of work in heavy construction does not itself distinguish construction work from other employment or hold the answer to our problem. Indeed these characteristics of the industry tend to strip from

---

[3] "Sec. 23. Deductions from gross income. In computing net income there shall be allowed as deductions:

(a) Expenses.

(1) Trade or business expenses.

(A) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; [redacted]."

a remote residence elements essential to its status as the sole "tax home."

When a taxpayer accepts employment at a place removed from the residence he maintains for his family, his travel and maintenance expense is not usually deductible under Sec. 23(a)(1)(A). *Commissioner* v. *Flowers*, 326 U. S. 465, 66 S. Ct. 250, 90 L. Ed. 203. Indeed under the rule of *Commissioner* v. *Flowers* the expense, in order to be deductible, must be "required by the exigencies" of the employer's business, not those of the calling of the employee. "The job, not the taxpayer's pattern of living, must require the travel." *Carragan* v. *Commissioner*, 2 Cir., 197 F. 2d 246,249. That an employee for reasons personal to himself and his family maintains a home at a distance from his business does not serve the business of the employer and ordinarily his travel expense and the expense of his maintenance at either place is not deductible. *Commissioner* v. *Flowers, supra., Barnhill* v. *Commissioner*, 4 Cir., 148 F. 2d 913, 159 A. L. R. 1210.

Where, however, an individual, who has a well established tax home, accepts temporary employment of short duration away from his tax home, it has been held that his travel and maintenance are allowable deductions under Sec. 23(a)(1)(A) and are not "personal, living or family expenses" within the meaning of Sec. 24(a)(1) even though such expenses are not incurred for the benefit of the employer. *Coburn* v. *Commissioner*, 2 Cir., 138 F. 2d 763, *Schurer* v. *Commissioner*, 3 T.C. 544, *Leach* v. *Commissioner*, 12 T.C. 20. If we assume the validity of this exception to the rule of *Commissioner* v. *Flowers* as applied to one not self-employed, it is essential that the employment away from the established tax home shall be temporary in contemplation at the time of its acceptance and not indeterminate in fact as it develops. However justified he may be from a subjective or personal point of view in maintaining a residence away from his post of duty, his travel and maintenance expense at his post of duty is not an ordinary and necessary business expense within the

meaning of Sec. 23(a)(1)(A) if the employment is of substantial or indefinite duration. *Commissioner* v. *Flowers*, 326 U.S. 465, 66 S. Ct. 250, 90 L. Ed. 203, *Ford* v. *Commissioner*, 4 Cir., 227 F. 2d 297, *Carragan* v. *Commissioner*, 2 Cir., 197 F. 2d 246, *Andrews* v. *Commissioner*, 4 Cir., 179 F. 2d 502; *Ney* v. *United States*, 8 Cir., 171 F. 2d 449; *Bercaw* v. *Commissioner*, 4 Cir., 165 F. 2d 521.

When the taxpayers in these cases went into the Tax Court, carrying the burden of showing that the Commissioner's determination was incorrect, they produced nothing to show that their employment on the dul'ont project was not of indefinite duration. It is clear that two of them left that employment for personal reasons when work was still available, while the third left after 20½ months for an undisclosed reason. For aught that appears, work might have been available there for all three for much longer than 20½ months. While each of them may have accepted other employment at other times which was temporary, that does not tend to prove that this employment was temporary and not of substantial or indefinite duration. And though subjective consideration of the reasonableness of their moving their residences to their post of duty may have some bearing in determining the applicability of Sec. 24(a)(1), it does not establish the deductibility of maintenance expenses under Sec. 23(a)(1)(A). *Bercaw* v. *Commissioner*, *supra.*; *Warren* v. *Commissioner*, 13 T.C. 205; *Whitaker* v. *Commissioner*, 24 T.C. 750.

The question of deductibility of such expenses is ordinarily one of fact. When the conclusionary finding that the work was temporary and maintenance expense deductible was clearly erroneous, however, it is our right and duty to reverse it.

REVERSED.

APPENDIX C

Conflicting Opinions

The Supreme Court of the United States

Commissioner of Internal Revenue v. *Flowers.*

No. 145.

Argued Dec. 11, 12, 1945.

Decided Jan. 2, 1946.

Rehearing Denied Jan. 28, 1946.

See 326 U.S. 812, 66 S. Ct. 482.

* * * * * * * * * * *

Mr. Justice RUTLEDGE dissenting.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

Certiorari by Commissioner of Internal Revenue to review a judgment of the Circuit Court of Appeals, 148 F. 2d 163, reversing a decision of the Tax Court of the United States, redetermining income tax deficiencies for 1939 and 1940 of J. N. Flowers, imposed by the Commissioner of Internal Revenue.

Judgment reversed.

Mr. J. Louis Monarch, of Washington, D. C., for petitioner.

Mr. J. N. Ogden, of Mobile, Ala., for respondent.

Mr. Justice MURPHY delivered the opinion of the Court.

This case presents a problem as to the meaning and application of the provision of § 23(a)(1)(A) of the Internal Revenue Code [1] allowing a deduction for income tax

---

[1] 26 U.S.C. § 23(a) (1) (A), as amended, 56 Stat. 819, 26 U.S.C.A. Int. Rev. Code, § 23 (a) (1) (A).

"§ 23. Deductions from gross income.

"In computing net income there shall be allowed as deductions:

"(a) Expenses.

"(1) Trade or business expenses.

"(A) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling

purposes of "traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business."

The taxpayer, a lawyer, has resided with his family in Jackson, Mississippi, since 1903. There he has paid taxes, voted, schooled his children and established social and religious connections. He built a house in Jackson nearly thirty years ago and at all times has maintained it for himself and his family. He has been connected with several law firms in Jackson, one of which he formed and which has borne his name since 1922.

In 1906 the taxpayer began to represent the predecessor of the Gulf, Mobile & Ohio Railroad, his present employer. He acted as trial counsel for the railroad throughout Mississippi. From 1918 until 1927 he acted as special counsel for the railroad in Mississippi. He was elected general solicitor in 1927 and continued to be elected to that position each year until 1930, when he was elected general counsel. Thereafter he was annually elected general counsel until September, 1940, when the properties of the predecessor company and another railroad were merged and he was elected vice president and general counsel of the newly formed Gulf, Mobile & Ohio Railroad.

The main office of the Gulf, Mobile & Ohio Railroad is in Mobile, Alabama, as was also the main office of its predecessor. When offered the position of general solicitor in 1927, the taxpayer was unwilling to accept it if it required him to move from Jackson to Mobile. He had established himself in Jackson both professionally and personally and was not desirous of moving away. As a result, an arrangement was made between him and the railroad whereby he

---

expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity."

could accept the position and continue to reside in Jackson on condition that he pay his traveling expenses between Mobile and Jackson and pay his living expenses in both places. This arrangement permitted the taxpayer to determine for himself the amount of time he would spend in each of the two cities and was in effect during 1939 and 1940, the taxable years in question.

The railroad company provided an office for the taxpayer in Mobile but not in Jackson. When he worked in Jackson his law firm provided him with office space, although he no longer participated in the firm's business or shared in its profits. He used his own office furniture and fixtures at this office. The railroad, however, furnished telephone service and a typewriter and desk for his secretary. It also paid the secretary's expenses while in Jackson. Most of the legal business of the railroad was centered in or conducted from Jackson, but this business was handled by local counsel for the railroad. The taxpayer's participation was advisory only and was no different from his participation in the railroad's legal business in other areas.

The taxpayer's principal post of business was at the main office in Mobile. However, during the taxable years of 1939 and 1940, he devoted nearly all of his time to matters relating to the merger of the railroads. Since it was left to him where he would do his work, he spent most of his time in Jackson during this period. In connection with the merger, one of the companies was involved in certain litigation in the federal court in Jackson and the taxpayer participated in that litigation.

During 1939 he spent 203 days in Jackson and 66 in Mobile, making 33 trips between the two cities. During 1940 he spent 168 days in Jackson and 102 in Mobile, making 40 trips between the two cities. The railroad paid all of his traveling expenses when he went on business trips to points other than Jackson or Mobile. But it paid none

of his expenses in traveling between these two points or while he was at either of them.

The taxpayer deducted $900 in his 1939 income tax return and $1,620 in his 1940 return as traveling expenses incurred in making trips from Jackson to Mobile and as expenditures for meals and hotel accommodations while in Mobile.[2] The Commissioner disallowed the deductions, which action was sustained by the Tax Court. But the Fifth Circuit Court of Appeals reversed the Tax Court's judgment, 148 F.2d 163, and we granted certiorari because of a conflict between the decision below and that reached by the Fourth Circuit Court of Appeals in *Barnhill* v. *Commissioner*, 148 F.2d 913.

[1, 2] The portion of § 23(a)(1)(A) authorizing the deduction of "traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business" is one of the specific examples given by Congress in that section of "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." It is to be contrasted with the provision of § 24(a)(1) of the Internal Revenue Code, 25 U.S.C.A. Int. Rev. Code, § 24(a)(1), disallowing any deductions for "personal, living, or family expenses." And it is to be read in light of the interpretation given it by Sec. 19.23(a)-2 of Treasury Regulations 103, promulgated under the Internal Revenue Code. This interpretation, which is precisely the same as that given to identical traveling expense deductions authorized by prior and successive Revenue Acts,[3] is deemed to possess implied

---

[2] No claim for deduction was made by the taxpayer for the amounts spent in traveling from Mobile to Jackson. He also took trips during the taxable years to Washington, New York, New Orleans, Baton Rouge, Memphis and Jackson (Tenn.), which were apparently in the nature of business trips for which the taxpayer presumably was reimbursed by the railroad. No claim was made in regard to them.

[3] Article 23(a)-2 of Regulations 101, 94, 86; Article 122 of Regulations 77 and 74; Article 102 of Regulations 69 and 65; Article 101(a) of Regulations 62.

legislative proposal and to have the effect of law. *Helvering* v. *Winmill*, 305 U.S. 79, 59 S.Ct. 45, 83 L.Ed. 52; *Bochm* v. *Commissioner*, 326 U.S. 287, 66 S.Ct. 120. In pertinent part, this interpretation states that "Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses. * * * Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted. * * * Commuters' fares are not considered as business expenses and are not deductible."

[3] Three conditions must thus be satisfied before a traveling expense deduction may be made under § 23(a)(1)(A):

(1) The expense must be a reasonable and necessary traveling expense, as that term is generally understood. This includes such items as transportation fares and food and lodging expenses incurred while traveling.

(2) The expense must be incurred "while away from home."

(3) The expense must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade.

[4] Whether particular expenditures fulfill these three conditions so as to entitle a taxpayer to a deduction is purely a question of fact in most instances. See *Commissioner* v. *Heininger*, 320 U.S. 467, 475, 64 S.Ct. 249, 254, 88 L.Ed. 171. And the Tax Court's inferences and conclusions on such a factual matter, under established principles, should not be disturbed by an appellate court. *Com-*

missioner v. *Scottish American Co.*, 323 U.S. 119, 65 S.Ct. 169; *Dobson* v. *Commissioner*, 320 U.S. 489, 64 S.Ct. 239, 88 L.Ed. 248.

In this instance, the Tax Court without detailed elaboration concluded that "The situation presented in this proceeding is, in principle, no different from that in which a taxpayer's place of employment is in one city and for reasons satisfactory to himself he resides in another." It accordingly disallowed the deductions on the ground that they represent living and personal expenses rather than traveling expenses incurred while away from him in the pursuit of business. The court below accepted the Tax Court's findings of fact but reversed its judgment on the basis that it had improperly construed the word "home" as used in the second condition precedent to a traveling expense deduction under § 23,(a)(1)(A). The Tax Court, it was said, erroneously construed the word to mean the post, station or place of business where the taxpayer was employed—in this instance, Mobile—and thus erred in concluding that the expenditures in issue were not incurred "while away from home." The Court below felt that the word was to be given no such "unusual" or "extraordinary" meaning in this statute, tht it simply meant "that place where one in fact resides" or "the principal place of abode of one who has the intention to live there permanently." 148 F.2d at page 164. Since the taxpayer here admittedly had his home, as thus defined, in Jackson and since the expenses were incurred while he was away from Jackson, the deduction was permissible.

The meaning of the word "home" in § 23(a)(1)(A) with reference to a taxpayer residing in one city and working in another has engendered much difficulty and litigation. 4 Mertens, Law of Federal Income Taxation (1942) § 25.82.

The Tax Court [4] and the administrative rulings [5] have consistently defined it as the equivalent of the taxpayer's place of business. See *Barnhill* v. *Commissioner*, *supra*, 4 Cir. On the other hand, the decision below and *Wallace* v. *Commissioner*, 9 Cir., 144 F.2d 407, have flatly rejected that view and have confined the term to the taxpayer's actual residence. See also *Coburn* v. *Commissioner*, 2 Cir., 138 F.2d 763.

[5] We deem it unnecessary here to enter into or to decide this conflict. The Tax Court's opinion, as we read it, was grounded neither solely nor primarily upon that agency's conception of the word "home." Its discussion was directed mainly toward the relation of the expenditures to the railroad's business, a relationship required by the third condition of the deduction. Thus even if the Tax Court's definition of the word "home" was implicit in its decision and even if that definition was erroneous, its judgment must be sustained here if it properly concluded that the necessary relationship between the expenditures and the railroad's business was lacking. Failure to satisfy any one of the three conditions destroys the traveling expense deduction.

---

[4] Bixler v. Commissioner, 5 B.T.A. 1181; Griesemer v. Commissioner, 10 B.T.A. 386; Brown v. Commissioner, 13 B.T.A. 832; Duncan v. Commissioner, 17 B.T.A. 1088; Peters v. Commissioner, 19 B.T.A. 901; Lindsay v. Commissioner, 34 B.T.A. 840; Powell v. Commissioner, 34 B.T.A. 655; Tracy v. Commissioner, 39 B.T.A. 578; Priddy v. Commissioner, 43 B.T.A. 18; Schurer v. Commissioner, 3 T.C. 544; Gustafson v. Commissioner, 3 T.C. 998.

[5] Section 19.23(a)-2 of Treasury Regulations 103 does not attempt to define the word "home" although the Commissioner argues that the statement therein contained to the effect that commuters' fares are not business expenses and are not deductible "necessarily rests on the premise that 'home' for tax purposes is at the locality of the taxpayer's business headquarters." Other administrative rulings have been more explicit in treating the statutory home as the abode at the taxpayer's regular post of duty. See e.g. O.D. 1021, 5 Cum. Bull. 174 (1921); I.T. 1264, I-1 Cum. Bull. 122 (1922); I.T. 3314, 1939-2 Cum. Bull. 152; G.C.M. 23672, 1943 Cum. Bull. 66.

[6] Turning our attention to the third condition, this case is disposed of quickly. There is no claim that the Tax Court misconstrued this condition or used improper standards in applying it. And it is readily apparent from the facts that its inferences were supported by evidence and that its conclusion that the expenditures in issue were non-deductible living and personal expenses were fully justified.

The facts demonstrate clearly that the expenses were not incurred in the pursuit of the business of the taxpayer's employer, the railroad. Jackson was his regular home. Had his post of duty been in that city the cost of maintaing his home there and of commuting or driving to work concededly would be non-deductible living and personal expenses lacking the necessary direct relation to the prosecution of the business. The character of such expenses is unaltered by the circumstance that the taxpayer's post of duty was in Mobile, thereby increasing the costs of transportation, food and lodging. Whether he maintained one abode or two, whether he traveled three blocks or three hundred miles to work, the nature of these expenditures remained the same.

The added costs in issue, moreover, were as unnecessary and inappropriate to the development of the railroad's business as were his personal and living costs in Jackson. They were incurred solely as the result of the taxpayer's desire to maintain a home in Jackson while working in Mobile, a factor irrelevant to the maintenance and prosecution of the railroad's legal business. The railroad did not require him to travel on business from Jackson to Mobile or to maintain living quarters in both cities. Nor did it compel him, save in one instance, to perform tasks for it in Jackson. It simply asked him to be at his principal post in Mobile as business demanded and as his personal convenience was served, allowing him to devide his business time between Mobile and Jackson as he saw fit. Except for the federal court litigation, all of the taxpayer's work in Jackson would normally have been performed in the headquarters at Mobile. The fact that he traveled frequently between the two cities and incurred extra living

expenses in Mobile, while doing much of his work in Jackson, was occasioned solely by his personal propensities. The railroad gained nothing from this arrangement except the personal satisfaction of the taxpayer.

[7] Travel expenses in pursuit of business within the meaning of § 23(a)(1)(A) could arise only when the railroad's business forced the taxpayer to travel and to live temporarily at some place other than Mobile, there advancing the interests of the railroad. Business trips are to be identified in relation to business demands and the traveler's business headquarters. The exigencies of business rather than the personal conveniences and necessities of the traveler must be the motivating factors. Such was not the case here.

It follows that the court below erred in reversing the judgment of the Tax Court.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice RUTLEDGE, dissenting.

I think the judgment of the Court of Appeals should be affirmed. When Congress used the "home" in § 23 of the Code, I do not believe it meant "business headquarters." And in my opinion this case presents no other question.

Congress allowed the deduction for "traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business." Treasury Regulations 103, § 19.23(a)-1, are to the same effect, with the word "solely" added after "home." Section 19.23(a)-2 also provides: "Commuters' fares are not considered as business expenses and are not deductible." By this decision, the latter regulation is allowed, in effect, to swallow up the deduction for many situations where the regulation has no fit application.

Respondent's home was in Jackson, Mississippi, in every sense, unless for applying § 23. There he maintained his family, with his personal, political and religious connections; schooled his children; paid taxes, voted, and resided over many years. There too he kept hold upon his place

as a lawyer, though not substantially active in practice otherwise than to perform his work as general counsel for the railroad. This required his presence in Mobile, Alabama, for roughly a third of his time. The remainder he spent in Jackson at the same work, except for the time he was required to travel to points other than Mobile.

The company's principal offices were there, including one set aside for respondent's use. But the bulk of its trackage was in Mississippi and much of its legal work, with which he was concerned, was done there. His choice to keep his home in Jackson must have been affected by this fact, although it was motivated chiefly by more purely personal considerations. It is doubtful indeed, though perhaps not material, whether by not moving to Mobile he did not save the Government from larger deductions on account of traveling expense than those he claimed.

There is no question therefore but that respondent's home was in Jackson for every purpose, unless for the single one of applying § 23. Nor is it in doubt that he traveled from Jackson to Mobile and return, as he claimed, or that he spent the sums deducted for that purpose, including meals and lodging. Neither is it denied, as matter of fact, that his sole reason for going to Mobile was to perform his work as it required his presence there or that he returned to his home in Jackson periodically when his duties no longer required him to be in Mobile.

I think this makes a case squarely within the statute and the regulations. But the Tax Court ruled that the claimed deductions were "personal, living, or family expenses." Because the taxpayer elected to keep his home in Jackson, rather than move to Mobile, and because his employer did not undertake to pay these expenses, it viewed the case as being the same as if he had moved to Mobile. In that event, it said, he would have been required to bear the expenses of his own meals and lodging. This is obvious, even though the "as if" conclusion does not follow. The court went on, however, to give the further reason for it: "The situation * * * is, in principle, no different from that in which a taxpayer's place of employment is in one city and for rea-

sons satisfactory to himself he resides in another." It seems questionable whether, in so ruling, the Tax Court has not confused the taxpayer's principal place of employment with his employer's. For on the facts Jackson rather than Mobile would seem more appropriately to be found *his* business headquarters. But, regardless of that, the authorities cited[1] and the Government's supporting argument show that the case was regarded as in essence the commuter's, excepted by the regulations.

Apart from this ruling, the Tax Court made no finding, of fact or law, that respondent was not engaged "in the pursuit of a trade or business"; that he was not "away from home"; that the expenses were not "business expenses" or "business traveling expenses"; or that they were not "ordinary and necessary." Yet by a merry-go-round argument,[2] which always comes back to rest on the

---

[1] Frank H. Sullivan, 1 B.T.A. 93; Mort L. Bixler, 5 B.T.A. 1181; Jennie A. Peters, 19 B.T.A. 901; Walter M. Priddy, 43 B.T.A. 18.

The Sullivan case illustrates the typical commuter situation. The Peters case illustrates the extension of that ruling to greater distances and irregular travel.

Recent decisions, however, where the traveling distance is great, appear to go on the theory, presented in the instant case, that the word "home" within the meaning of § 23(a) (1) means "principal place of business." See Tax Court Memorandum Opinion, Dec. 13,853(M), 1 C.C.H. Tax Serv. 1945, p. 1268. Thus, Mertens says that the disallowance of traveling expenses to one's place of business "is based primarily on the requirement that the traveling expenses include only amounts expended 'while away from home.'" 4 Mertens, Law of Federal Income Taxation, 478.

[2] Thus, the assertion that the deductions were "not even 'business' expenses" is brought back to the meaning of "home" by the given reason that "the maintenance of more than one dwelling place manifestly is not essential to the prosecution of a business." And this, in turn, completes the circle by resting on the conclusion that the taxpayer had two dwelling places, one in Mobile (presumably the hotel or hotels where he stopped) "where he resided during the periods the living expenses in question were incurred," the other in Jackson "where he resided during other periods." Likewise, the conclusion that the deductions were not "ordinary and necessary expenses," see note 8, depends on the view that Jackson was not "home" but Mobile was. So with the assertion that the "Mobile living expenses" were not "business traveling expenses."

idea that "home" means "business headquarters," the Government seeks to inject such issues and findings, including a *Dobson* v. *Com'r*, 320 U.S. 489, 64 S.Ct. 239, 88 L.Ed. 248, contention, into the Tax Court's determination. I think there was only one issue, a question of law requiring construction of the statute as to the meaning of the word "home" and, if that is resolved against the Government, the Tax Court's judgment has no other foundation on which to stand. Every other contention falls when this one does. All stand if it is valid.

I agree with the Court of Appeals that if Congress had meant "business headquarters," and not "home," it would have said "business headquarters." When it used "home" instead, I think it meant home in everyday parlance, not in some twisted special meaning of "tax home" or "tax headquarters."[3] I find no purpose stated or implied in the Act, the regulations or the legislative history to support such a distortion or to use § 23 as a lever to force people to move their homes to the locality where their employer's business headquarters may be, although their own work may be done as well in major part at home. The only stated purpose, and it is clearly stated, not in words of art, is to relieve the tax burden when one is away from home on business.

The Government relies on administrative construction, by the Commissioner and the Tax Court, and says that unless this is accepted the Act creates tax inequality. If so, it is inequality created by Congress, and it is not for the Commissioner or the Tax Court, by administrative reconstruction, to rewrite what Congress has written or to correct its views of equality. Moreover, in my opinion, the inequity, if any, comes not from the statute or the regulation but from the construction which identifies petitioner with a commuter.

---

[3] Cf. Cox v. Lott, 12 Wall. 204, 20 L. Ed. 370; Addison v. Holly Hill Co., 322 U.S. 607, 617, 618, 64 S. Ct. 1215, 1221, 88 L. Ed. 1488.

That word too has limitations unless it also is made a tool for rewriting the Act. The ordinary, usual connotation, cf. 21 I.C.C. 428; *Pennsylvania R. Co.* v. *Towers*, 2[illegible] U.S. 6, 12, 38 S.Ct. 2, 4, 62 L.Ed. 117, L.R.A.1918C, 475, does not include irregular, although frequent journeys of 350 miles, requiring Pullman accommodations and some twelve to fifteen hours, one way.

Congress gave the deduction for traveling away from home on business. The commuter's case, rightly confined, does not fall in this class. One who lives in an adjacent suburb or city and by usual modes of commutation can work within a distance permitting the daily journey and return, with time for the day's work and a period at home, clearly can be excluded from the deduction on the basis of the section's terms equally with its obvious purpose. But that is not true if "commuter" is to swallow up the deduction by the same sort of construction which makes "home" mean "business headquarters" of one's employer. If the line may be extended somewhat to cover doubtful cases, it need not be lengthened to infinity or to cover cases as far removed from the prevailing connotation of commuter as this one. Including it pushes "commuting" too far, even for these times of rapid transit.[4]

Administrative construction should have some bounds. It exceeds what are legitimate when it reconstructs the statute to nullify or contradict the plain meaning of non-technical terms not artfully employed. Moreover, in this case the matter has been held in suspension by litigation

[4] Conceivably men soon may live in Florida or California and fly daily to work in New York and back. Possibly they will be regarded as commuters when that day comes. But, if so, that is not this case and, in any event, neither situation was comprehended by Congress when § 23 was enacted.

with varying results[5] and apparent qualification by the Tax Court consequent upon some of the decisions.[6]

By construing "home" as "business headquarters"; by reading "temporarily" as "very temporarily" into § 23; by bringing down "ordinary and necessary" from its first sentence into its second;[7] by finding "inequity" where Congress has said none exists; by construing "commuter" to cover long-distance, irregular travel; and by conjuring from the "statutory setting" a meaning at odds with the plain wording of the clause, the Government makes over understandable ordinary English into highly technical tax jargon. There is enough of this in the tax laws inescapably, without adding more in the absence of either compulsion or authority. The arm of the taxgatherer reaches far. In my judgment it should not go the length of this case. Congress has revised § 23 once to overcome niggardly construction.[8] It should not have to do so again.

* * * * * * * * * *

---

[5] See Wallace v. Commissioner, 9 Cir., 144 F. 2d 407; Coburn v. Commissioner, 2 Cir., 138 F. 2d 763; and the decision now in review, 5 Cir., 148 F. 2d 163, with which compare Barnhill v. Commissioner and Winborne v. Commissioner, 4 Cir., 148 F. 2d 913.

[6] See Harry F. Schurer, 3 T.C. 544; Charles G. Gustafson, 3 T.C. 998; Mortimer M. Mahony, C.C.H. Tax Ct. Serv., Dec. 14,508(M), April 10, 1945; Charles J. McLennan, C.C.H. Tax Ct. Serv., Dec. 14,644(M), June 25, 1945; Robert S. Shelley, deceased, C.C.H. Tax Ct. Serv., Dec. 15,642(M), June 25, 1945.

[7] The language is: "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *." § 23(a)(1) (1) (A), Internal Revenue Code, 26 U.S.C.A. Int. Rev. Code, § 23(a) (1) (A).

[8] The Treasury Regulations in force in 1920 allowed deduction of only the excess of the cost of meals and lodging away from home over the cost at home; and under earlier regulations none of this expense was allowed. Congress inserted the words "all" and "entire" in the 1921 Act to overcome this ruling.

Wallace v. *Commissioner of Internal Revenue* (two cases).

Nos. 10547, 10548.

Circuit Court of Appeals, Ninth Circuit.
July 17, 1944.

* * * * * * * * * *

Upon Petitions to Review Decisions of the Tax Court of the United States.

Petition by William R. Wallace, Jr., and by Ina Claire Wallace to review decisions of the Tax Court of the United States redetermining deficiences in income taxes imposed by the Commissioner of Internal Revenue.

Decisions reversed.

W. R. Wallace, Jr., of San Francisco, Cal., for petitioner Ina Claire Wallace.

W. R. Ray, of San Francisco, Cal., for petitioner W. R. Wallace, Jr.

Williamson & Wallace, of San Francisco, Cal., for petitioners.

Samuel O. Clark, Jr., Asst. U. S. Atty. Gen., and Sewall Key, Bernard Chertcoff, Robert N. Anderson, and Harry Baum, Sp. Assts. to Atty. Gen., for respondent.

Before WILBUR and GARRECHT, Circuit Judges, and McCORMICK, District Judge.

McCORMICK, District Judge.

These are two petitions for review of decisions of the Tax Court which sustained rulings of the respondent-commissioner disallowing deductions claimed by petitioners, respectively, and in consequence adjudging deficiencies against the respective petitioners in their income taxes for the year 1939.

The petitions have been consolidated and heard upon a single printed record and this opinion will suffice to determine both reviews.

The total amount of deductions in controversy, one-half of which has been claimed by each of the petitioners on his or her separate federal income tax return for the calendar year 1939, is not in dispute, nor is any question raised

as to the right of petitioners to treat combined earnings after their marriage on March 16, 1939, as community income and to file separate returns in which all proper and allowable community deductions may be separately taken by the spouses.

The contention of the commissioner, sustained by the tax court, relates solely to the household expenses of Mrs. Wallace incurred at Beverly Hills during the period from March 16, 1939, to September 15, 1939, the time when Mrs. Wallace was employed by Loew's, Inc., under the terms of a contract for her personal services as an actress.

The decisions under review, while determining under the facts that petitioners' domicile or legal residence after their marriage on March 16, 1939, was San Francisco, nevertheless substantially held that Mrs. Wallace was not "away from home in the pursuit of a trade or business" during the time that she was fulfilling her professional engagements as an actress in Hollywood from March 16, 1939 to September 15, 1939, under contract with a motion picture company. The tax court concluded that "home" as the term is used in Section 23(a)(1)[1] of the Internal Revenue Code, 26 U.S.C.A. Int.Rev.Code, § 23(a)(1), means the taxpayer Mrs. Wallace's place of business, employment, or the post or station at which she was employed and that Hollywood being such place she was not away from "home" in the pursuit of business and consequently the claimed deductions for her household expenses from March 16 to September 15, 1939 were not allowable.

---

[1] "Sec. 23. Deductions from gross income. * * *

"(a) Expenses. (1) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity."

The question for decision is therefore aptly stated in the brief of respondent, as follows: "Whether taxpayers, a husband and wife, domiciled in San Francisco, California, are entitled under section 23(a)(1) of the Internal Revenue Code to deduct as traveling expenses 'while away from home' amounts expended by the wife for food, rent and similar living expenses at Hollywood, California, while she was employed there during 1939 as a motion picture actress?"

From the memorandum opinion of the Tax Court which embodies the only findings of fact in the record and from the undisputed evidence in the record before us the following pertinent factual situation is disclosed:

Petitioners are husband and wife and were married March 16, 1939. Petitioner Ina Claire Wallace is a well-known actress whose professional activities have been extensive and versatile in many plays on the "legitimate" stage and in motion pictures, both in England and in America. Petitioner William R. Wallace, Jr., is a lawyer and has lived and practiced his profession in San Francisco since the year 1927.

Upon their marriage the petitioners mutually agreed to reside at San Francisco and the domicile or legal residence of both petitioners after their marriage has been in San Francisco. Mrs. Wallace came to California from her home in New York City in November, 1938, for the purpose of professionally participating in the making of a motion picture under a written contract between herself and Loew's, Inc., dated November 18, 1938. This agreement engaged her services as a motion picture actress and her availability in performance thereof in Los Angeles at all required times over a forty-week period beginning in November, 1938, and ending in September, 1939, at compensation to be based upon her normal theatrical season's earnings and to be payable at the rate of $2,000 per week. Prior to leaving New York to fill the engagement with Loew's, Inc., Mrs. Wallace had been residing in a hotel and had also at about the same time taken a lease for three

years on a completely furnished apartment in New York City which she was getting ready to occupy when she was urged by telephone from the West Coast to accept the Loew's, Inc., engagement in California. When she left New York she definitely intended to return there and live in the furnished apartment which she had reserved at the completion of her contract with Loew's, Inc. This she never did, as her marriage completely altered her plans. Nevertheless, she kept the New York apartment for the full three-year period, subletting it for a portion of the term, which continued through the entire taxable year of 1939, and into 1942. Upon her arrival in Los Angeles to perform under the contract with Loew's, Inc., petitioner lived at a hotel for a few weeks, then moved into a house upon which she had taken a lease for three months, upon the expiration of which she moved into another residence in Beverly Hills, which before she had decided to marry Mr. Wallace she had agreed to rent from March 15, 1939 to September 15, 1939, the approximate date when it was anticipated that the motion picture in which she was to appear and which professional engagement brought her to California would be completed.

The commencement of the motion picture in which petitioner was specially engaged to appear under the contract with Loew's, Inc., was delayed until about May 1, 1939. Although the understanding was for her appearance in the specific belated picture, nevertheless, being under the contract from November, 1938, she agreed to and did work in another cinema for Loew's, Inc., for five or six weeks immediately after her arrival in California. During this period she resided in a hotel and in a house which she had rented for a definite period in Beverly Hills, California.

After their marriage in Salt Lake City, Utah, Mr. and Mrs. Wallace went to San Francisco, which city they had mutually decided to make their home, and, after a sojourn there at a hotel, they mutually established their permanent living quarters in San Francisco. Mrs. Wallace remained

with her husband until about May 1, 1939, when she returned under her contract to Los Angeles to work in the picture which had been just started. She remained there until about July 1st, returning to her husband in San Francisco where she stayed most of the month of July, then again going to Los Angeles to continue her professional commitment with Loew's, Inc., and remaining until the motion picture was finished about the first of September. She then returned to her domicile and residence in San Francisco and has continued to permanently reside there with her husband ever since, although petitioners have both been outside of the State of California on professional pursuits or business, sometimes together and sometimes separately.

Upon Mrs. Wallace's return to her home in San Francisco in May, and again in July, during breaks in her motion picture engagement, she and her husband read and studied plays and discussed them with authors and actors' agents, received her business mail, telephone calls and telegrams connected with her business and professional activities, and again after her return home on completion of her Hollywood engagement in September Mr. and Mrs. Wallace continued for the rest of the year to read and review together many stage plays that had been submitted for their approval, to consider and reject requests to "do" other motion pictures and to negotiate with persons prospective to arranging with theatrical agents and managers for a play featuring Mrs. Wallace as distinguished from a motion picture for the current theatrical season.

[1] As the decision of the Tax Court inherently involves the interpretation of terms used in a statute it presents reviewable matter in the Circuit Court of Appeals. *Dobson* v. *Commissioner*, 320 U.S. 489, 64 S.Ct. 239.

[2] Our first inquiry is to ascertain whether there is any indication of an intention by Congress to employ the expression "away from home in the pursuit of a trade or business" in the legislation under consideration other than according to the ordinary and usual meaning of the words

used. The plain, obvious and rational meaning of a tax statute is always to be preferred to any narrow or hidden sense that nothing but the exigency of a hard case justifies,[2] and while the meaning to be given to terms used will be determined from the character of their use by the legislature in the statute under consideration, words in common use should not be distorted by administrative or judicial interpretation. This is, in effect, what has been done by the Commissioner and sustained by the Tax Court.

We have found nothing in section 23(a)(1) of the Internal Revenue Code, 26 U.S.C.A. Int.Rev.Code § 23(a)(1) or in the earlier legislation from which this code provision is derived [3] which denotes any intent by Congress to attribute to the word "home" as therein used any unusual or novel meaning.[4]

[3] Therefore the Tax Court in its effort to differentiate between the conceded "domicile" and "legal residence" [5] of both petitioners after their marriage and their "home" at such times, has, we think, invaded the domain of Congress in construing the term "home" as used in the statute under consideration as meaning "the taxpayer's place of business, employment or the post or station at which he is employed." Had Congress intended that the word "home" should not be understood and applied in its ordinary sense but rather as meaning the locale of employment of the taxpayer, it would have used a more appropriate term to express such an intent.

[4] A home in relation to the place of abode is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of the relation between the person and the place.[5]

---

[2] Lang v. Commissioner, 289 U.S. 109, 53 S. Ct. 534, 77 L. Ed. 1066; Lynch, Executrix, etc., v. Alworth-Stephens Company, 8 Cir., 294 F. 190, affirmed 267 U.S. 364, 45 S. Ct. 274, 69 L. Ed. 660.

[3] See note of Professor Erwin N. Griswold in Vol. LVI, No. 7, Harvard Law Review, June, 1943, page 1140 et seq.

[4] Coburn v. Commissioner, 2 Cir., 138 F. 2d 763.

[5] American Law Institute, Restatement of Conflict of Laws, section 13.

[5] If the elements of this characterization of a home are applied to the habitations of the petitioners, no place, under the facts found by the Tax Court, other than New York City and San Francisco can be classified as the "home" of either of the petitioners during the calendar year 1939. Both the Commissioner and the Tax Court found that petitioner William R. Wallace, Jr., at all applicable times had his home, his residence and domicile in San Francisco, but despite the undisputed evidence of petitioner Ina Claire Wallace's retention of the living apartment in New York City and her definite intention up to the time of her marriage of returning there upon completion of her professional engagement with Loew's, Inc., and notwithstanding the uncontroverted agreement of petitioners to establish their marital home in San Francisco, and the uncontradicted evidence that petitioners lived in such home all times in the taxable year after their marriage when Mrs. Wallace was not temporarily staying in Beverly Hills and vicinity to complete the motion picture in which she was acting, the Tax Court concluded that Mrs. Wallace's home during the time she was acting in the cinema was in the vicinity of Hollywood.

Petitioner Ina Claire Wallace's relations with Hollywood and its vicinity were casual, professional and temporary. None of her private and intimate attitudes and relationships which go to make up home, as that place is ordinarily designated,[6] found lodgment there. Her physical presence and her place of abode in the vicinity of Hollywood were business necessities, and at no time did she manifest any intention or desire to remain there after completion of her work. All of her expenditures for which the deductions are claimed were allowable business expenses[7] as distinguished

---

[6] "The word home denotes a merely natural and untechnical conception based upon the relation between a person's residence and his intention as to residence." Kennan on Residence and Domicile, p. 40.

[7] Section 19.23(a)-1, Treasury Regulation 103.

from personal expenses [8] and were incurred in the pursuit of and directly connected with a temporary contract of employment while she was away from her usual place of abode.

[6] The clearly expressed purpose of Congress in enacting income tax laws is to impose tax burdens upon the *net income* of individuals,[9] and in ascertaining such income when Congress has used only literal terms in specifying the allowable deductions from gross income such meaning of deductions must be accepted by the courts unless such course would lead to absurd results.[10] We can conceive of no such results by giving to the word "home" in the application of Section 23(a) (1) of the Internal Revenue Code its normal and customary meaning. On the other hand, to judicially innovate a meaning of "home" as the taxpayer's "place of business, employment, or the post or station at which he is employed," as the Tax Court has done, would, we think, operate to thwart the obvious purpose of Congress [11] to tax *net* income and would in many cases tax the gross instead of the net income of individuals.[12] The court should function to interdict such a result.

In the briefs of the respective parties various decisions of the Board of Tax Appeals and other administrative agency action, are cited and discussed.[13] Petitioner con-

---

[8] 26 U.S.C.A. Int. Rev Code, § 24, Section 19.24-1, Treasury Regulation 103.

[9] 26 U.S.C.A. Int. Rev. Code, § 11, 52 Stat. 452; Stewart v. Commissioner, 5 Cir., 95 F. 2d 821.

[10] See Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315, at pages 332, 333, 59 S. Ct. 191, 83 L. Ed. 195.

[11] Haggar Co. v. Helvering, 308 U.S. 389, at pages 394, 395, 60 S. Ct. 337, 84 L. Ed. 340.

[12] See 26 U.S.C.A. Int. Rev. Code, § 21, for definition of Net Income.

[13] Griesemer v. Commissioner, 10 B.T.A. 386; Brown v. Commissioner, 13 B.T.A. 832; Potter v. Commissioner, 18 B.T.A. 549; Powell v. Commissioner, 34 B.T.A. 655; Cabot v. Commissioner, Memo Decision, Docket No. 90996, 1939, 39 B.T.A. 1241; G.C.M. 7133, VIII-2, C.B. p. 85; Bixler v. Commissioner, 5 B.T.A. 1181; Duncan v. Commissioner, 17 B.T.A. 1088; Lindsay v. Commissioner, 34 B.T.A. 840; Tracy v. Commissioner, 39 B.T.A. 578; Priddy v. Commissioner, 43 B.T.A. 18.

tends that these rulings are conflicting and irreconcilable in construing the meaning of the word "home" as it is used in Section 23(a) (1) of the Internal Revenue Code and in prior revenue statutes of like import, while respondent asserts that such rulings have evolved neither conflict nor confusion in administrative action. We think it unnecessary in this review to determine whether there is any conflict in the administrative interpretations of the legislation under consideration.

The crucial question here is what is the proper construction to be given to an unambiguous income tax statute, and administrative decisions in such matters, while entitled to respect, are not binding upon the court.[14] It is noteworthy in this regard that the Board of Tax Appeals in situations similar to the one involved in this review has construed the word "home" in like income tax statutes in its usual and common meaning, and not figuratively.[15]

We conclude that the taxpayers, a husband and wife, were entitled under Section 23(a) (1) of the Internal Revenue Code to deduct as traveling expenses "while away from home" amounts expended by Mrs. Wallace for food, rent and household expenses in the vicinity of Hollywood, California, while she was employed there as a motion picture actress during the year 1939.

The decisions of the Tax Court entered May 7, 1943, being "clear-cut mistakes of law" [16] are, and each of such decisions is, reversed.

---

[14] Minnesota Tea Co. v. Commissioner, etc., 8 Cir., 76 F. 2d 797, affirmed 296 U.S. 378, 56 S. Ct. 269, 80 L. Ed. 284; Biddle v. Commissioner, etc., 2 Cir., 86 F. 2d 718.

[15] Griesemer v. Commissioner, 10 B.T.A. 386; G.C.M. 7133, VIII-2, C.B. p. 85; Brown v. Commissioner, 13 B.T.A. 832.

[16] Ref. Dobson v. Commissioner, 320 U.S. 489, 64 S. Ct. 239